Single Bench

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.Appeal No. . . . 623/2005

APPELLANT : Roman Lal Belchandan,
S/o Shri Durga Prasad Belchandan,
Aged 57 years, occupation - Service.
Resident of Khursipar, P.S. Arjunda,
Distt. Durg (C.G.).

VERSUS.

RESPONDENT : State of Chhattisgarh.

APPEAL U/S 374 (2) OF THE CODE OF CRIMINAL PROCEDURE.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.623/2005

Roman Lal Belchandan

Vs.

State of Chhattisgarh

Post for Order : 2 .08.2006

Sd-/
Dilip Raosaheb Deshmukh
Judge

HIGH C.OURT OF CHHATTISGARH AT BILASPUR

Cr.Appeal No.623/2005

Before : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Roman Lal Belchandan

Vs.

State of Chhattisgarh

Present:-

Shri T.K.Tiwari, learned Counsel for the appellant.
Shri Ashish Shukla, learned Govt. Advocate for the State.

JUDGMENT
(Delivered on 02.08.2006)

This appeal is directed against the judgment dated 29th July 2005 delivered by Shri A.R.Dhruv, Special Judge and Additional Sessions Judge, Durg in Sessions case Number-42/2002 whereby the appellant was convicted under Sections 418 and 466 of IPC and was sentenced to undergo rigorous imprisonment for 3 years and a fine of Rs.2,000/- for each offence. Fine amount awarded by the learned trial Court has been deposited by the appellant.

2. It is not disputed that during *Bandobast* of the year 1985 the appellant-Roman Lal Belchandan was the Revenue Inspector for Tahsil Dondilohar, District Durg. Co-accused P.Y.Swami, since acquitted, was the Assistant Superintendent, Land Records at the relevant time. Co-accused Prakash Chand Jain has died.

3. Briefly stated the prosecution story is that one Gobruram filed a written complaint before the Scheduled Castes Welfare Cell, Durg on 3.10.1997 that his father Aghnuram owned 2.40 acres of agricultural land bearing Kh. No.273 in Dondilohar. During *Bandobast*

i.e. in 1985-86 Kh.No. 273 of the aforesaid land was changed as Kh.No.720 area 2.40 acres. The appellant-Revenue Inspector in order to cause wrongful gain to co-accused Prakash Chand Jain and wrongful loss to Gobruram committed forgery by adding 1.50 acres of land out of the above Kh.No.720 to the land bearing Kh.No.713 belonging to Prakash Chand Jain.

4. During investigation, it was found that Gobruram was the erstwhile owner of the aforesaid land Kh.No.273 area 2.40 acres and had mortgaged it with Sangilal Bafna who deceitfully got the land transferred in the name of Anjorsing and started cultivating the land. Sangilal Bafna and Anjorsing have died. Gobruram and Premsingh are tribals and belong to Scheduled Tribe. Land Kh.No.273 area 2.40 acres got recorded in the name of Premsing, son of Anjorsing. Gobruram initiated proceedings before the Revenue Court in Balod. In the year 1985-86 Gobruram became the owner of the aforesaid land. In the meanwhile, *Bandobast* took place. The appellant-Revenue Inspector Roman Lal Belchandan in collusion with P.Y.Swami, Assistant Superintendent, Land Records hatched a criminal conspiracy and in order to cause wrongful gain to Prakash Chand Jain transferred an area of 0.70 hectares out of Kh. No. 720 to Kh.No.713 which stood in the name of Prakash Chand Jain. The remaining 0.36 hectares land in Kh.No.720 remained in the name of Premsingh. After completion of investigation, the appellant was prosecuted under Sections 420, 467, 471 of the I.P.C. and also under Section 3 (1) (iv) and 3(1) (v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Act).

5. The appellant abjured the guilt, pleaded innocence and examined S.D.M. Abhay Kumar Mishra in defence who deposed that in

the Departmental Enquiry conducted by him for the aforesaid irregularity the appellant-Roman Lal Belchandan was exonerated from the charges since it was found that during *Bandobast* the appellant had duly performed his duties, as per rules. The prosecution examined 17 witnesses. Relying upon the evidence led by the prosecution, the Trial Court convicted and sentenced the appellant as aforesaid in para - 1.

6. Shri T.K.Tiwari, learned counsel for the appellant argued that there was not even an iota of evidence to show that the appellant acted malafidely in order to cause wrongful gain to Prakash Chand Jain. It was also contended that the conduct of the appellant was bona fide and a fair conduct in due performance of his public duty after taking all necessary steps and precautions. The finding recorded by the learned trial Judge in paragraph 29 that during *Bandobast*, land bearing Kh.No.273 area 2.40 acres was neither recorded in the name of Gobruram or his father Aghnuram in Revenue Records nor was in their possession was also pointed out. Paragraph 45 of the judgment was also referred while contending that on the aforesaid ground the learned trial Judge held that the charge under Section 3 (1) (iv) and 3(1) (v) of the Act was not established against the appellant. It was also contended that the defence' evidence led by the appellant was wholly ignored by the learned Trial Judge which revealed that the conduct of the appellant was bona fide and in due discharge of his public duties. Paragraph 6 of the testimony of Gobruram was also pointed out which revealed that during *Bandobast* a proclamation had been issued regarding the aforesaid land Kh.No.273 area 2.40 acres and no objection was preferred by Aghnuram or Gobruram. Paragraph 40 of his testimony showing that in a civil litigation between Prakash Chand Jain and Gobruram relating

to the aforesaid land, a decree was passed in favour of Prakash Chand Jain, was also referred. On the above premises, it was urged that the conviction and sentence awarded by the learned trial Judge was liable to be set aside. On the other hand, Shri Ashish Shukla, learned Govt. Advocate argued in support of the impugned judgment.

7. Having considered the rival submissions, I have perused the record of Special Case No.42/2002. The testimony of defence witness Abhay Kumar Mishra who was the Enquiry Officer in Departmental Enquiry conducted against the appellant was wholly lost sight of by the learned trial Judge. It revealed that in the Departmental Enquiry it was found that the appellant had in due discharge of his duties during *Bandobast* had acted diligently with regard to land in dispute. The testimony of complainant-Gobruram P.W.1 clearly showed that his father Aghnuram had sold the land Kh.No.273 area 2.40 acres to Sangilal and thereafter Sangilal was in cultivating the possession of the aforesaid land and no land out of the aforesaid Kh.No. was in their possession. It was also admitted that in the year 1984 to 1986 during the proceedings of *Bandobast,* the entire proceedings were drawn as per rules after issuing proclamation relating to aforesaid land in the village in which no objection was raised by Gobruram. In paragraph 4 of his testimony, it is also borne out that in a Civil Litigation between Gobruram and Prakash Chand Jain relating to the land Kh.No.273 area 2.40 acres, a decree was passed in favour of Prakash Chand Jain. The copy of the judgment of the Civil Court was not produced by the prosecution. In paragraph 48 of the impugned judgment, the learned trial Judge has held that although the existence of *mens rea* or the fact of deriving any monetary benefit by the appellant out of the transfer of land in the name of Prakash Chand Jain during *Bandobast* was not borne out, yet

the appellant could not derive any benefit therefrom or the fact of having been exonerated in the Departmental Enquiry. The above inference drawn by the learned trial Judge was wholly erroneous. The aforesaid facts clearly go to show that the act of the appellant in transferring the part of the erstwhile Kh.No.273 in the name of Prakash Chand Jain was a bona fide act committed in due discharge of his public duties and did not fall within the definition of forgery. The requisite intent either to prove the guilt of the appellant under Section 418 I.P.C. or to cause damage or injury to a person or to support another person's claim or title essential for constituting an offence under Section 466 I.P.C. is missing in this case.

8. Having thus considered the rival submissions and the evidence on record, I am of the considered opinion that the conviction of the appellant under Section 418 and 466 of I.P.C. and the sentence awarded thereunder are liable to be set aside.

9. In the result, the appeal is allowed. Conviction of the appellant under Sections 418 and 466 of I.P.C. and the sentence awarded thereunder are set aside. The appellant is acquitted.

Sd-/
Dilip Raosaheb Deshmukh
Judge

Anjani